



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

June 21, 2022

Memorandum for: Deputy Commissioner, Trials

Re: **Lieutenant Richard Modestil**
Tax Registry No. 928796
Transit Division District 34
Disciplinary Case Nos. 2020-22240, 2021-23311,
2022-24519

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on March 29, 2022 and was charged with the following:

DISCIPLINARY CASE NO. 2020-22240

1. Said Lieutenant Richard Modestil, while assigned to Transit District 32, on or about and between March 1, 2019 and April 30, 2019, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that: said Lieutenant struck an individual known to the Department with a belt causing contusions to her thighs.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

2. Said Lieutenant Richard Modestil, while assigned to Transit District 32, on or about January 28, 2020, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that: said Lieutenant struck an individual known to the Department in the mouth causing the inside of her lips to bleed.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

DISCIPLINARY CASE NO. 2021-23311

1. Said Lieutenant Richard Modestil, while off-duty and assigned to Transit District 34, on or about July 5, 2020, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that: after being involved in a motor vehicle collision said Lieutenant left the scene of said collision without exchanging information.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

2. Said Lieutenant Richard Modestil, while off-duty and assigned to Transit District 34, on or about July 5, 2020, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that: said Lieutenant filed an insurance claim with his vehicle's insurance company with an inaccurate narrative of the accident details.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

DISCIPLINARY CASE NO. 2022-24519

1. Said Lieutenant Richard Modestil, while assigned to Transit Bureau District 34 and on modified assignment, on or about October 15, 2021, was outside of his residence while on sick report, without permission from the Department surgeon or Sick Desk supervisor.

P.G. 205-01, Page 3, Paragraph 12(b)(2)

**CHRONIC ABSENCE
CONTROL PROGRAM**

This Memorandum supersedes the previous Memorandum originally issued on June 3, 2022 for Disciplinary Case Nos. 2020-22240, 2021-23311, and 2022-24519.

In a Memorandum dated May 4, 2022, Assistant Deputy Commissioner Jeff S. Adler found Lieutenant Richard Modestil guilty of all Specifications, after he pled guilty to Specification Nos. 1 and 2 in Disciplinary Case No. 2020-22240 and to Specifications Nos. 1 and 2 in Disciplinary Case No. 2021-23311, and was found guilty of Specification No. 1 in Disciplinary Case No. 2022-24519. Having read the Memorandum and analyzed the facts of this matter, I approve of the findings, but disapprove the penalty.

I have considered the totality of the circumstances and issues concerning the misconduct for which Lieutenant Modestil has been found guilty, and deem that separation from the Department is warranted. However, instead of an outright dismissal from the Department, I will permit an alternative manner of separation from the Department for Lieutenant Modestil at this time.

Until the occurrence of the present disciplinary matters, Lieutenant Modestil has had an otherwise long and unblemished career. In that time Lieutenant Modestil was a model member of the service, which has a mitigating effect on the present penalty.

It is therefore directed that, in lieu of dismissal, an *immediate* post-trial settlement agreement be implemented with Lieutenant Modestil in which he shall forfeit thirty (30) suspension days to be served, forfeit thirty-four (34) suspension days already served, forfeit all time and leave balances (except terminal leave lump sum payment), be placed on (1) year dismissal probation, and immediately file for service retirement.

Such service retirement shall also include Lieutenant Modestil's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department.

If Lieutenant Modestil does not agree to the terms of this service retirement agreement as noted, this Office is to be notified without delay. This agreement is to be implemented ***IMMEDIATELY.***



Keechant L. Sewell
Police Commissioner



POLICE DEPARTMENT

May 4, 2022

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In the Matter of the Charges and Specifications	:	Case Nos.
- against -	:	2020-22240
Lieutenant Richard Modestil	:	2021-23311
Tax Registry No. 928796	:	2022-24519
Transit Division District 34	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Jamie Moran, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: James Moschella, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

Case No. 2020-22240

1. Said Lieutenant Richard Modestil, while assigned to Transit District 32, on or about and between March 1, 2019 and April 30, 2019, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Lieutenant struck an individual known to the Department with a belt causing contusions to her thighs.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

2. Said Lieutenant Richard Modestil, while assigned to Transit District 32, on or about January 28, 2020, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Lieutenant struck an individual known to the Department in the mouth causing the inside of her lips to bleed. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

Case No. 2021-23311

1. Said Lieutenant Richard Modestil, while off-duty and assigned to Transit District 34, on or about July 5, 2020, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that after being involved in a motor vehicle collision said Lieutenant left the scene of said collision without exchanging information.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

2. Said Lieutenant Richard Modestil, while off-duty and assigned to Transit District 34, on or about July 5, 2020, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Lieutenant filed an insurance claim with his vehicle's insurance company with an inaccurate narrative of the accident details.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

Case No. 2022-24519

1. Said Lieutenant Richard Modestil, while assigned to Transit Bureau District 34 and on modified assignment, on or about October 15, 2021, was outside of his residence while on sick report, without permission from the Department surgeon or Sick Desk supervisor.

P.G. 205-01, Page 3, Paragraph 12(b)(2)

CHRONIC ABSENCE
CONTROL PROGRAM

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 29, 2022. Respondent, through his counsel, entered a plea of guilty to the subject charges in Case Nos. 2020-22240 and 2021-23311, and contested the single specification in Case No. 2022-24519. The Department called Sergeant Kenneth Farrell as a witness, and Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent guilty of all charges, and recommend a total of sixty (60) suspension days (as per the breakdown below), fifteen (15) vacation days, counseling, and dismissal probation.

ANALYSIS

Respondent appeared before this court in connection with three separate matters. In the first case, it is charged that Respondent, on two separate occasions, physically struck [REDACTED] child; Respondent pleaded guilty to these charges, and testified in mitigation of the penalty, providing background context for the two incidents. The second matter charges Respondent with leaving the scene of a motor vehicle collision, and submitting an insurance claim with an inaccurate narrative; Respondent pleaded guilty to these charges as well, and again explained the surrounding circumstances leading to the occurrence. In the third case, it is alleged that Respondent was impermissibly outside his residence while on sick report; Respondent contested this charge, but as will be discussed below, the credible evidence established that he was guilty of this offense as well. The three matters will be considered separately.

Incidents with Teenage Child

Before coming to this country in 1994, Respondent lived in Haiti, where he developed a keen sense of the value of a strong education. Despite it being a poor country, his parents put him through one of the best schools in Haiti. Respondent testified that he wanted his [REDACTED], who are now [REDACTED] years of age, to get the best education possible. However, his intentions were frustrated when, around 2015-2016, [REDACTED], [REDACTED], according to Respondent, does not encourage education. Respondent, who remained [REDACTED], explained how [REDACTED] became more distant, and were less interested in committing to schoolwork since they believed the world would be ending soon. The grades of his [REDACTED] [REDACTED] began to slip, and she accumulated absences from school. (Tr. 91-96, 102-04, 179-82)

On one occasion in March or April of 2019, Respondent had a dispute with his [REDACTED] [REDACTED], who came home with a report card that indicated 20 absences. Respondent told her that if she wanted to live with him, she needed to attend school. Respondent admitted that he spanked [REDACTED] two times with his hand. [REDACTED] became very upset, and started throwing things around the room. Respondent wrapped a belt around his hand, and struck [REDACTED] [REDACTED] three or four times on her upper legs and thighs; photographs show extensive bruising to the [REDACTED]'s legs, particularly in the thigh area (Resp. Exs. B & C). Respondent told [REDACTED] [REDACTED] to clean up the room, and he left for work. Respondent maintained that he was not intending to hurt [REDACTED] and he regrets his actions; he insisted that he loves [REDACTED], and was only trying to discipline her [REDACTED].¹ (Tr. 97-101, 116, 179-80)

¹ The parties stipulated that if called as a witness, the [REDACTED] would have testified that the underlying disagreement that day was not about school, but was because she lost her driver's permit when she was supposed to go to driver's education. In either case, there is no dispute that Respondent repeatedly did strike [REDACTED] with a belt, causing the injuries depicted in the photographs. (Tr. 189-90)

A second incident between Respondent and [REDACTED] occurred on January 28, 2020. Respondent testified that he was picking up [REDACTED] after a half-day of school when they began arguing on the car ride home about her desire to attend a two-year community college. [REDACTED] stated that Jesus is coming soon, and the four-year college program was too expensive, but Respondent told her not to worry, that he would pay. According to Respondent, [REDACTED] said something “disrespectful” to him, though he could not recall precisely what she said. Respondent told her, “Don’t talk to [REDACTED] like that,” and, with his left hand on the steering wheel, he hit [REDACTED] in the face with a backward flip of his right hand. As a result, [REDACTED] suffered a cut to her lip (*See* Resp. Ex. B). Again, Respondent expressed regret for his actions, maintaining that he did not intend to hurt [REDACTED]. He acted out of emotion, and conceded that it was a stupid reaction on his part. Respondent reiterated that “everything is about education. I was trying to put [REDACTED] on the right track, that she can get as good an education as possible.” (Tr. 104-09, 182-83)

Neither incident was reported at the time of occurrence. However, several months later, on June 22, 2020, members of the NYPD came to Respondent’s home and suspended him in connection with these two incidents; it was unclear from the record how the incidents came to be reported. [REDACTED]

[REDACTED] The Department referred Respondent to domestic violence counseling, anger management counseling, and Employee Assistance Unit counseling, all of which he successfully completed. Respondent has had no further incidents with [REDACTED]. (Tr. 118-23)

Motor Vehicle Accident

Several weeks after being suspended from the job, Respondent was involved in an automobile incident in the early morning hours of July 5, 2020. Respondent testified that in addition to the shock of having just been suspended, he was dealing with multiple additional sources of anxiety at the time. For instance, in April of 2020, his uncle, who was instrumental in bringing Respondent to this country, passed away from COVID. Respondent's brother, his "best friend," also passed from COVID on April 23, after being in a coma for 25 days. Respondent was "devastated" by these losses. He also was dealing with the day-to-day stress of doing his job amidst the protests and riots that were occurring throughout the city. Respondent testified that it felt like "the world was coming to an end for me." He could not sleep or eat, and suffered from depression, [REDACTED]. (Tr. 126-29)

It was in this context that the events of July 5, 2020 occurred. Respondent testified that he went to a barbecue in Suffolk County on the evening of July 4. He did not eat, and drank two beers before leaving around 2300 hours, but was not at all intoxicated. Respondent left the party intending to drive to Brooklyn, where he was staying with a friend. Based on LPR records for his vehicle, and video footage, Respondent apparently spent the next several hours driving in various directions, including on the Cross Island Parkway, the Verrazano Bridge, and the Belt Parkway, rather than proceeding directly to the location in Brooklyn; Respondent has no specific memory of driving for that many hours.

Indeed, the next thing Respondent could recall was being awakened by another motorist at 0430 hours while Respondent was asleep inside his vehicle on Kings Highway. The motorist alerted him that there was front-end damage to his car; Respondent erroneously assumed that the

motorist had just struck his vehicle, and the two argued, with both calling 911. Once police arrived, it was clarified that the motorist had nothing to do with whatever accident Respondent had been involved in. An accident report was prepared, in which Respondent stated that his car had been struck at the Kings Highway location by another, unknown vehicle, which had subsequently fled the scene (Dept. Ex. 3). Respondent admitted that he contacted his insurance company and provided them with the information in the accident report; Respondent never received reimbursement and wound up paying for his car's repairs himself. Since Respondent was unsure how his vehicle had been damaged, he called his insurance company to ask if anyone had filed a claim involving his car, but no such claim had been filed. (Tr. 130-45, 171-75)

Several months later, during a Department interview on December 16, 2020, Respondent was shown LPR records reflecting the route he took on July 5. He also watched video footage showing that he was involved in a collision on the Belt Parkway, from which he had promptly driven away. Respondent explained that he had no recollection of that collision, but acknowledged from the video footage that he had, in fact, been involved in the collision, and had left the scene. Subsequently, Respondent was referred for [REDACTED], [REDACTED]. (Tr. 146, 149-50)

Out of Residence

On October 1, 2021, Respondent went out regular sick for 15 days due to COVID-like symptoms; he was due back on October 16th. At the time, Respondent was modified, which meant that he needed permission from the sick desk supervisor in order to leave his residence. Sergeant Kenneth Farrell from the Absence Control Investigations Unit testified that he did a residence check on Respondent on the morning of October 15. Farrell arrived at Respondent's

home shortly after 1100 hours, but Respondent was not there. He called Respondent's cell phone at 1108 hours, but Respondent did not answer. Farrell sent a text message to Respondent (Dept. Ex. 2), and tried calling several more times (*see* screenshots of Farrell's phone, Dept. Ex. 1, showing calls placed to Respondent's cell at 1108, 1111, 1117, and 1127 hours), before finally making phone contact with Respondent, who informed Farrell that he was at the pharmacy and on his way home. Farrell confirmed that Respondent arrived home a few minutes later, at 1131 hours. Farrell acknowledged that he could not be certain which of his calls to Respondent actually went through to Respondent's phone. (Tr. 43-52, 60-62, 68-71)

Respondent testified that his parents, both of whom were sick with COVID, were living with him at the time of this incident. On the morning of October 15, his mother had a fever and was not feeling well. Respondent, fearing his mother might be dying, rushed to his car and drove to the pharmacy to obtain medication. He explained that under the circumstances, calling the Sick Desk to ask permission was the last thing on his mind. Beginning around 1117 hours, Respondent did try calling the sick desk several times, but there was no answer. Respondent denied seeing the text from Farrell, since he was driving at the time. He also denied that he tried calling the Medical Division only after seeing Farrell's number appear on his phone, though in his official Department interview he did state that seeing that Farrell called jogged his memory. (Tr. 150-56, 164-70)

A printout of Respondent's phone records (Resp. Ex. A)² does not reflect a call coming in from Farrell at 1108 hours or at 1111. It does, however, show an incoming call from Farrell's number at 1117, as well as one at 1127. Immediately following the 1117 call, there are several outgoing calls from Respondent's phone to Absence Control. (Tr. 64-68, 73)

² The parties stipulated that the time reflected in the records is off by one hour, so that a call listed at 10:17 a.m. was actually placed at 11:17 a.m.

Specification 1 charges Respondent with being outside his residence while on sick report, without having received permission to do so. It is undisputed that Respondent did leave his home without first calling the Sick Desk in order to receive permission. Respondent eventually did try calling Absence Control, but from my review of the phone records, those calls occurred only after Farrell had tried calling Respondent; at least one of the calls from Farrell, at 1117 hours, appears on Respondent's phone records prior to Respondent's attempts to call for permission.

Respondent explained that given his mother's condition, he felt some urgency to leave his home before he could call the Sick Desk, a factor which is relevant on the issue of penalty. But as to the charge itself, the credible evidence has established that Respondent left his home without obtaining the requisite permission, and I find him Guilty of Specification 1.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 2, 2001, has been found guilty in connection with three separate cases. Respondent pleaded guilty on the two most serious of those cases, the one where he twice struck [REDACTED], and the case where he left the scene of a motor vehicle accident.

The Department Advocate asks that Respondent's employment with the Department be terminated. On the most serious charges, where Respondent admitted to striking [REDACTED] on two separate occasions, the Advocates acknowledges that the presumptive penalty does not call for termination; rather, the presumptive penalty is 30 suspension days, dismissal probation, and counseling. The Advocate asks, however, that the aggravated penalty of termination be applied, based on the totality of Respondent's conduct in all three matters.

However, in making its recommendation, the Advocate does not give proper weight to the context in which these matters occurred. With respect to the first incident involving [REDACTED], Respondent convincingly explained that he was extremely frustrated, [REDACTED], with her lack of motivation regarding her education, which manifested itself in her poor attendance record; he hit her with the belt in order to discipline her. The incident where he struck [REDACTED] one time with the back of his hand, as he was driving her home from school, appeared to be an impulsive reaction to her disrespectful comments as they were discussing college. Respondent came across as sincere as he testified that in neither case did he intend to harm [REDACTED], whom he loves; rather, his actions were those of a well-meaning, [REDACTED]. On the witness stand, Respondent, who has no prior disciplinary record in more than 20 years of service to the Department, readily acknowledged his guilt as to both of these matters, expressed appropriate regret for his actions, and recognized that he made a mistake in how he handled his emotions. Respondent has successfully completed counseling programs on domestic violence and anger management.

To be sure, Respondent's frustration with [REDACTED] does not excuse his actions in these matters; indeed, he addressed his concerns about [REDACTED]'s education in an inappropriate manner. His conduct in the first incident, where he repeatedly struck [REDACTED]

in the legs with a belt, was particularly troubling. But under the totality of the circumstances presented here, that misconduct can fairly and adequately be addressed with the presumptive penalty, which provides for a substantial number of penalty days, probation, and counseling. Since there were two separate incidents, each involving injury to a [REDACTED], the penalty days shall run consecutively. Accordingly, on the two counts where Respondent admitted to striking [REDACTED], I recommend a total of sixty (60) suspension days, dismissal probation, and counseling. Since Respondent previously served thirty-four (34) days on suspension, I recommend that he forfeit those thirty-four (34) suspension days, and be suspended for an additional twenty-six (26) days, bringing the total to sixty (60) suspension days.

There also needs to be additional accountability for Respondent's misconduct in the other two cases. For his failure to obtain permission before leaving his residence while out sick, the mitigated penalty of five (5) vacation days is appropriate, in light of the surrounding circumstances involving his sick mother. As to the motor vehicle case, I credit Respondent's testimony that he had no specific memory of leaving the scene of the collision, and that at the time he filed an insurance claim with the inaccurate information, he legitimately believed that the accident occurred on Kings Highway. Respondent was experiencing a great deal of anxiety at the time: his uncle and brother, with whom he was extremely close, both passed away from COVID, and Respondent was subsequently suspended in connection with the cases involving [REDACTED]. Respondent was having difficulty eating and sleeping, and was taking medication. Under these circumstances, and given Respondent's lack of ill-intent, the forfeiture of an additional ten (10) vacation days is appropriate to address this misconduct. In recommending this penalty, this tribunal is mindful that Respondent was apparently driving his vehicle for

several hours with only a vague recollection of doing so, reinforcing the appropriateness of continued monitoring and/or counseling as needed.

Taking into account the totality of the facts and issues in these matters, I recommend as follows: that Respondent forfeit thirty-four (34) days previously served on suspension, that he be suspended for an additional twenty-six (26) days (for a total of sixty (60) suspension days), that he forfeit fifteen (15) vacation days, that he attend counseling as directed by the Police Commissioner, and that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
LIEUTENANT RICHARD MODESTIL
TAX REGISTRY NO. 928796
DISCIPLINARY CASE NOS. 2020-22440, 2021-23311 &
2022-24519

Respondent was appointed to the Department on July 2, 2001. On his three most recent annual performance evaluations, he received 4.0 overall ratings of "Highly Competent" for 2019, 2020 and 2021. He has been awarded two medals for Excellent Police Duty.

Respondent has no disciplinary history. In connection with Case No. 2020-22240, he was suspended without pay from June 22, 2020 to July 25, 2020. He was placed on Level 2 Discipline Monitoring in December 2020; that monitoring remains ongoing.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials